

THEODORE J. BOUTROUS JR.,
SBN 132099
tboutrous@gibsondunn.com
RICHARD J. DOREN, SBN 124666
rdoren@gibsondunn.com
DANIEL G. SWANSON, SBN 116556
dswanson@gibsondunn.com
JAY P. SRINIVASAN, SBN 181471
jsrinivasan@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

MARK A. PERRY, SBN 212532
mperry@gibsondunn.com
CYNTHIA E. RICHMAN (D.C. Bar
No. 492089; *pro hac vice*)
crichman@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: 202.955.8500
Facsimile: 202.467.0539

VERONICA LEWIS (Texas Bar
No. 24000092; *pro hac vice*)
vlewis@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue, Suite 1100
Dallas, TX 75201
Telephone: 214.698.3100
Facsimile: 214.571.2900

E. JOSHUA ROSENKRANZ
(N.Y. Bar No. 2224889; *pro hac vice pending*)
jrosenkranz@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019-6142
Telephone: 212.506.5000
Facsimile: 212.506.5151

WILLIAM F. STUTE
(D.C. Bar No. 1032093; *pro hac vice pending*)
wstute@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, N.W.
Washington, DC 20005-1706
Telephone: 202.339.8400
Facsimile: 202.339.8500

Attorneys for Defendant APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

CASE NO. 4:20-CV-05640-YGR

**DECLARATION OF MARK GRIMM IN
SUPPORT OF DEFENDANT APPLE INC.'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

1 I, Mark Grimm, declare as follows:

2 1. I make this declaration in support of Apple's Opposition to Plaintiff's Motion for a
3 Preliminary Injunction. I have personal knowledge of the matters stated herein, and if called upon to
4 do so, I could and would competently testify hereto.

5 2. I am one of two Game Developer Managers at Apple. In this capacity, I work closely
6 with certain developers who have a large presence on the App Store, including Epic Games, Inc. and
7 its affiliates (collectively, "Epic" or "Epic Games"). Through my work, I have gained personal
8 knowledge and experience concerning Apple's Worldwide Developer Relations ("WWDR" or
9 "Developer Relations") team and App Store team, and of the various tools, services, and benefits that
10 Apple provides developers.

11 3. To ensure great experiences for both developers and consumers alike, Apple's
12 Developer Relations team, working alongside the App Store team and others, provides developers with
13 a host of complimentary benefits and support services, including a suite of technical support services.
14 Epic has benefitted as much as any other developer with respect to these services. For example, in the
15 roughly two years since *Fortnite* was first launched on the App Store in March 2018, Epic has used
16 hundreds of Apple's unique Application Programming Interface (API) frameworks and classes (such
17 as Metal).

18 4. Apple also has expended great effort to accommodate Epic's specific needs and
19 demands. For example, because *Fortnite* updates twice a week, Apple's Developer Relations is in
20 near-constant contact with Epic—including close engineer-to-engineer direct communication—to
21 work on technical issues and to ensure *Fortnite*'s prospective updates comply with Apple's app review
22 guidelines. Apple has also provided an enormous amount of engineering support to help reduce
23 *Fortnite*'s memory footprint. This has permitted *Fortnite* to be played on older model iPhones that
24 have less memory than more recent releases.

25 5. In addition, Apple has also provided hardware to Epic, including 16 Apple Silicon
26 Developer Transitions Kits across Epic's engineering organization, to ensure high-performance
27 functioning of Unreal Engine 4 and the future Unreal Engine 5 on forthcoming Macintosh computers
28 with new Apple silicon processors. This represents as much support as Apple provides to most any

1 other developer. In addition, in response to repeated demands by Epic, Apple has permitted Epic to
2 distribute builds on some 950 iPads and 1150 iPhones for app development and testing purposes—
3 again, as much as Apple allocates to any other developer. These allowances are valuable to Epic as
4 they magnify the company’s ability to fine tune their apps and refine their products in advance of going
5 live with users.

6 6. Apple has also provided various other additional engineering-related benefits to Epic,
7 like early disclosure briefings for the *Fortnite* and Unreal Engine teams so that Epic knows in advance
8 about upcoming technological changes in Apple’s software, including the release of Apple’s ARKit;
9 and semi-annual trips of Apple engineers to North Carolina, where Epic is based, for in-depth
10 consulting and coordination. This close level of support has contributed to *Fortnite*’s ability to enjoy
11 130 million iOS downloads globally.

12 7. In addition to providing engineering, technical, and hardware-related support, Apple has
13 also provided Epic with complimentary promotional support across various platforms. For example,
14 Apple has featured Epic at major Apple events, including on-stage demos of *Infinity Blade* by Epic
15 President Mike Capps during Apple’s Fall 2011 Media Event for iOS 5, and again the following year
16 during the iPad keynote address at Apple’s Fall 2012 Media Event. More recently, Apple showcased
17 *Fortnite* in an on-stage demo at Apple’s 2015 Worldwide Developer Conference (“WWDC”), as well
18 as Epic’s Unreal Editor in VR Mode on a Mac through an on-stage demo of a dynamic Star Wars
19 virtual reality scene at Apple’s 2017 WWDC. Apple has also showcased Epic by featuring *Fortnite* in
20 press tours and displaying the Unreal Engine logo in a presentation on Apple’s Metal
21 technology. Apple’s high-profile showcasing of Epic helps Epic maintain its position as an industry
22 leader in graphics and gaming.

23 8. Epic also runs Unreal Engine, a game-development software platform on which Epic
24 bases many of its own games, like *Fortnite*, and that it licenses to other developers to use as the software
25 platform for their apps. The Unreal Engine is designed and maintained to work with all manner of
26 gaming platforms, including XBOX, PlayStation, personal computers, Android, and iOS. Third-party
27 developers offer approximately 1,000 apps on Apple’s App Store that are based on the Unreal Engine
28 platform. By comparison, the competing Unity engine is far more popular among Apple developers,

1 and is used by the overwhelming majority of such developers that use a 3D graphics engine in their
2 application development.

3 9. Apple has spent significant time and resources in assisting Epic with Unreal Engine.
4 For example, Apple has coached Epic's team on how to adopt new ARKit (augmented reality) and
5 virtual reality features in the Unreal Engine, and to provide similar support to developers who use
6 Unreal Engine and want to use ARKit features. Apple also has expended significant engineering
7 resources to improve performance of the Unreal Engine with Apple's Metal graphics system on iOS
8 and Mac hardware and software. Apple's Hardware Architecture/Pro Workflow Team likewise has
9 helped to optimize the Unreal Engine on the Mac for creative workflows, virtual sets and CI/Build
10 Systems. And Apple also has assisted Epic in the adoption by the Unreal Engine of features required
11 for the inclusion of games in the new Apple Arcade service. All of this support for Unreal Engine is
12 in addition to the myriad day-to-day work done by Apple's Engineering teams in its engagements with
13 Epic.

14 I declare under penalty of perjury under the laws of the United States and the State of California
15 that the foregoing is true and correct, and that I executed this declaration on the 15th of September,
16 2020 in San Jose, California.

17 
18 Mark Grimm